

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 06-CR-320

DAVID R. OLOFSON,

Defendant.

**DEFENDANT'S MOTION FOR A NEW TRIAL
PURSUANT TO FED. R. CRIM. P. 33.**

DAVID R. OLOFSON, by counsel, submits the instant motion for a new trial pursuant to FED. R. CRIM. P. 33. The instant motion is dependent upon Olofson's motion to compel the disclosure of evidence, Docket No. 81. If the motion to compel is granted, the new evidence will require that a new trial be granted in the interest of justice. In support of his motion for a new trial, Olofson alleges the following:

1. The disclosure of the correspondence from the Bureau of Alcohol Tobacco and Firearms (BATF) to SGW/Olympic Arms constitutes newly discovered evidence. Because the instant motion is based upon newly discovered evidence and has been filed within three years of the verdict, it is considered timely. FED. R. CRIM. P. 33(b)(1); *United States v. Cavendar*, 228 F.3d 792, 802 (7th Cir. 2000).

2. The SGW letter directly contradicts the government's position at trial that Olofson's AR-15 rifle was a machine gun because it had four internal M-16 parts. Contrary to a motion brought under Rule 29, the Court, in a motion under Rule 33, is allowed to evaluate the weight of the new evidence and make credibility determinations regarding it. *United States v. Eberhart*, 388 F.3d 1043, 1050 (7th Cir. 2004). After evaluation, it is clear that the SGW letter undermines the jury's verdict in this case and creates a miscarriage of justice. *United States v. Reed*, 875 F.2d 107, 113 (7th Cir. 1989).

WHEREFORE, David R. Olofson, by counsel, respectfully requests that the Court grant his motion for a new trial pursuant to FED. R. CRIM. P. 33.

Dated at Milwaukee, Wisconsin, May 1, 2008.

Respectfully submitted,

s/ Brian T. Fahl
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